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July 5, 1995

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in MM Docket No. 94-123

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's rules, this is to advise you that Richard Cotton, Executive Vice President and General Counsel, Ellen Shaw Agress, Vice President, Legal Policy and Planning and John Hane, Washington Counsel, met with Chairman Hundt and Julius Genachowski, of his staff, to discuss this proceeding. The enclosed materials and proposals to phase out the Prime Time Access Rule were presented and discussed at those meetings.

Respectfully yours,

John K. Hane

cc: Chairman Reed E. Hundt
Julius Genachowski

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PTAR CANNOT BE JUSTIFIED ON THE GROUNDS
THAT IT HELPS EMERGING NETWORKS

IF THE FCC WANTS TO HELP EMERGING NETWORKS IT SHOULD DO SO DIRECTLY

- o PTAR was not designed to help independent stations or emerging networks. It therefore does a lousy job of it
- o If helping of emerging networks is determined to be an appropriate regulatory goal, the Commission should conduct a new proceeding to develop appropriate regulations to achieve it
 - What kind of station is eligible for a "competitive advantage":
 - Market size? Market competitive profile? Ownership profile? UHF? Ratings? Revenues?
 - What regulatory policies would help eligible stations or emerging networks?
 - Multiple ownership, duopoly and cross-ownership rules do not apply?
 - Option time and right to reject rules do not apply?
 - Tax credits? Spectrum fee credits?
 - Note: When the Fox Network was "emerging," the FCC removed regulatory barriers to its growth (e.g., fin/syn). It did not give Fox an affirmative regulatory advantage or subsidy

PTAR DOES NOT HELP EMERGING NETWORKS

- o The majority of UPN and WB affiliates in the Top 50 markets do not broadcast off-network programming during Access
 - Nearly 60% of the program hours broadcast by non-Fox independent stations in the Top 50 markets during Access are not off-network
- o Only a small subset of UPN/WB affiliates rely on recent "hit" off-network programs
 - In 37 of the Top 50 markets, UPN affiliates do not broadcast one of the top 5 off-network programs in Access
 - In 43 of the Top 50 markets, WB affiliates do not broadcast one of the top 5 off-network programs in Access
- o Even as to the few UPN or WB affiliates that use "hit" off-network programs, the data submitted in the PTAR proceeding do not show that over time PTAR has benefitted the network programming that follows Access:
 - For non-Fox independents, ratings both during the Access Hour and in the first hour of prime time are lower in the long run than they were before PTAR was adopted
 - Any increase in prime time ratings on independent stations is limited to Fox affiliates
 - This indicates Fox Network programming, not Access programming, is responsible for improved prime time ratings on Fox affiliates

COSTS OF PTAR FAR OUTWEIGH ANY BENEFITS

- o The effect of PTAR is to shut out competitors and diminish diversity in the Access Hour
 - Access is the most concentrated hour on television. Four companies (King World, Paramount, Fox and Warner Brothers) control 96% of the first-run syndicated programming broadcast by network affiliates in the Top 50 markets
 - The three major studios in this group will supply 37% of the three networks' prime time entertainment series hours this fall
 - These three studios each have broadcast networks of their own
 - Eighty-five (85%) percent of the first-run Access programs on Top 50 market affiliates is produced by one of the major Hollywood studios that also produces shows for the networks
- o Allowing the three networks to produce and distribute new first-run programming in Access would increase competition, station choice and diversity

PARAMOUNT ENJOYS COMPETITIVE BENEFITS FROM PTAR THAT HAVE NOTHING TO DO WITH UPN

- o Paramount provides a third of the first-run programming broadcast in Access; It is the #2 first-run syndicator in all dayparts
- o Warner Brothers, which operates an "emerging network" but is not a major player in first-run, is not lobbying for PTAR
- o Paramount has the resources to support its affiliates without help from the government
 - Viacom/Paramount is one of the largest media conglomerates
 - In addition to its dominant position in first-run, Paramount is a major producer and syndicator of network programming
 - Paramount syndicates three of the top 5 off-network programs (Cheers, Roseanne and Cosby)
 - Paramount could help UPN affiliates by providing them with these "hit" off-network programs at below market price